

FILED

SEP 07 2010

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

TANNER J. PARRICK, individually)	CV 09-95-M-DWM-JCL
and as Personal Representatives of the)	
Estate of Jerry J. Parrick, deceased,)	
and on behalf of Thais D. Park and)	
Maria Elliot,)	
)	
)	
Plaintiffs,)	
)	
vs.)	ORDER
)	
FEDEX GROUND PACKAGE SYSTEM,)	
INC., BRIDGEWATER TRUCKING, LLC,)	
SERGEY BUSLAYEV, and VLADIMIR)	
KOCHUKOV,)	
)	
)	
Defendants.)	
_____)	

Plaintiffs filed a Motion for Partial Summary Judgment in this matter on June 8, 2010. Plaintiffs request summary judgment on the issue of liability against Defendants FedEx Ground Package System, Inc., Sergey Buslayev, and Vladimir Kochukov based on negligence per se.

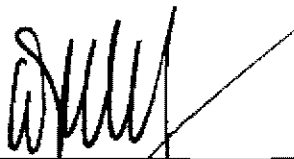
United States Magistrate Judge Jeremiah C. Lynch entered Findings and

Recommendation (dkt #144) in this case on August 3, 2010. Judge Lynch found that the regulatory violations Plaintiffs assert on summary judgment are not sufficient to establish negligence per se under Montana law. He also found there are genuine issues of material fact as to whether Defendant Buslayev violated the particular statutes at issue.

Plaintiffs did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Lynch’s recommendation and therefore adopt it in full.

IT IS HEREBY ORDERED that Plaintiffs’ Motion for Partial Summary Judgment: Negligence Per Se (dkt #92) is DENIED.

Dated this 7th day of September, 2010.



Donald W. Molloy, District Judge
United States District Court